



March 15, 1996

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BY OVERNIGHT FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: CS Docket No. 95-184 - Telecommunications Services - Inside
Wiring, Customer Premises Equipment

Dear Mr. Caton:

Sentinel Real Estate Corporation acts as an investment advisor primarily for public and private pension funds that wish to invest in real estate. Our portfolio currently contains over 45,000 apartment units nationally. We endeavor to provide a high level of service to our residents, including the provision of efficient cable and telephone service. In a competitive market we appreciate that our ability to provide suitable telecommunication services to our residents is not only good business practice but is also required as a matter of practical necessity.

Given our experience we are extremely concerned about the FCC's Notice to Proposed Rulemaking released on January 26, 1996 regarding telephone and cable wiring inside buildings. We understand that the proposed rule would allow multiple telecommunications providers to enter residential properties to wire and use the property in the furtherance of the providers' businesses without the consent of the owner. Not only will such an obviously unnecessary proposal¹ arrogate to the federal government an area of law currently left to the states and take away substantive rights of property owners without due process of law in violation of the United States Constitution, it would ironically work to the practical detriment of our residents. Some explanation of these issues is no doubt appropriate as without an understanding of them the FCC's proposal might take effect, with extremely

¹. We certainly are not aware of any need for this proposal. Others may see some advantage to their position, but it is difficult to see how it can be argued it is necessary to accommodate their interests.

damaging consequences.

The proposed regulation would insert federal jurisdiction in areas currently left to state control in at least two ways. First of all the issue of property rights and the rights of public utilities and services to obtain access to private property is an area of law that has historically been left to the states. In addition it is also conceivable, if not probable, that the proposed regulation would usurp standards provided by local building and fire codes in respect of requirements respecting wiring within residential structures.

With regard to the unintended detriment residents will suffer, we would imagine it has been argued to the Commission that the proposal will maximize the variety of services available to apartment residents. In practice this will unfortunately not be the case, at least when existing technology is taken into account. For guidance the Commission might look to the instructive example of the experience of states that have experimented with similar approaches, commonly referred to as "forced access" laws. In Nevada, where Sentinel operates nearly 6,000 apartments, we have first hand experience with a forced access regime. In our experience forced access is actually anti-competitive. The residents actually suffer. For your benefit we have attached an analysis of how this comes about, but the essential point is that the practical effect of forced access is anti-competitive, not pro-competitive.

We also are concerned that the FCC in proposing this regulation may not have taken into account the duties and practical difficulties that would follow for both owners and residents. Since the owner would not be able to refuse access, there is no bargaining power available to the owner to negotiate performance standards or price schedules that would benefit the residents. In fact it is not clear to us on what basis an owner would be able to take any action whatsoever against a telecommunications provider on behalf of the residents. This should be of particular concern since as a practical matter the individual residents do not have the resources or time to take on the cable companies. Although in theory cable franchises are subject to regulation by the municipality in which they operate, apartment residents by and large do not have sufficient political leverage to obtain results.

The preceding points do not begin to cover other significant issues such as loss of control over the manner in which wiring and equipment will be installed, loss of control over the aesthetics, loss of control over removal of unused or abandoned equipment, loss of control over service personnel's entry onto the property and even loss of control over crime prevention measures. It is also unconscionable that owners should have both the practical and legal responsibility to minimize the risk of fires, but will be forced to accept cable operators coming on to their properties with the risk they will cause fires, without having control over the operator.

We also do not understand what the basis of FCC authority and jurisdiction in this area is. Our admittedly limited understanding of the FCC's authorizing legislation is that the FCC has jurisdiction over the communications industry, not the housing industry. Beyond the jurisdictional issue are constitutional limitations on the taking of private property without compensation. It is without question the case that the proposed regulation would savage an existing property right of owners to limit and control access to their properties, that this right has value² and that no compensation is proposed to be given owners.

We also believe the general notion of elevating the business interests of what is a non-essential service provider over existing property rights is bad public policy. In terms of the precedent involved, what other businesses will next ask for the unfettered right of access to properties? It is not clear how the line will be drawn in determining what businesses should next be favored over property owners and who will not.

In conclusion the proposed regulation will harm, not help, residents, will make the management of apartment properties much more difficult harming both residents and owners, has no apparent connection to the FCC's authorizing legislation and amounts to an unconstitutional taking of property rights without just compensation. It is unnecessary, will cause unintended negative consequences and probably favors certain operators over others for no apparent federal purpose. Any one of these concerns should be enough reason to oppose the proposal. Taken together they are a damning indictment of it. We therefore respectfully suggest that the Commission reject the proposal.

Thank you for your attention to this matter. Please contact the undersigned should you have any questions or comments.

Sincerely yours,


Michael J. Kenny
Corporate Counsel

cc: J. Streicker
C. Kurtz

². In certain cases owners are able to realize income by "selling" exclusive rights of entry to cable operators willing to pay for them. This has the effect of lowering the overall cost of operating the property by creating a source of income that would otherwise not exist. It also establishes that the proposed regulation would amount to a taking of private property.

ANALYSIS OF THE EFFECT OF NEVADA'S FORCED ACCESS LAW

While time constraints do not permit our providing the Commission with specific examples of the manner in which Nevada's forced access rule does not benefit residents, we would be happy to provide them. In any event the dynamic of how a superficially pro-competitive law could have such an anti-competitive effect is all too familiar to us, and is actually rather straightforward.

We appreciate that the Nevada forced access law differs in certain material respects from the proposed regulation. The primary difference is that Nevada's law benefits the cable franchises while the proposed regulation is intended to benefit any operator. But in our experience this factor has not materially altered our view of the problems associated with any forced access principle. There are two reasons for this. The first is that Nevada's law does not prevent a private cable operator from attempting to enter a property serviced by the cable franchise if the franchise does not have a right of entry agreement with the franchise. In other words, competition should still theoretically be possible in Nevada. But in practice it does not occur.

The second reason is that, while in theory changed technology might alter the situation, the cost of installing a second system under current technology is a substantial factor in the operator's decision whether to compete head on with an existing operator. This is a concern not only for the private cable operator but also for the cable franchise. In fact we have direct experiences with situations where the franchise has chosen not to enter a property where a private cable operator already operates notwithstanding the forced access law. What this means is that at least until technology changes, it is our view that any forced access law only helps the first operator on the property. Such an operator can be complacent about their service because they know that the owner will face substantial impediments in trying to negotiate an agreement with an alternate provider.

Many large private cable operators inform us that they will not operate in Nevada due to the forced access law. As a result Nevada is one of the least, if not the least, competitive states for cable services where Sentinel manages properties.

We are also not aware of any benefit to residents that results from Nevada's forced access law. To the contrary our analysis indicates that it costs them money and makes it very difficult for us to upgrade poor performing cable services. This follows from the fact that the owner cannot serve as an entity with bargaining power to obtain a better level of service. The absence of private cable operators willing to operate in Nevada means that their generally lower cost services are not available to the number of residents that would otherwise be the case.

In conclusion, forced access under current technology means less competition and higher costs.